

**STATE OF WISCONSIN
MILWAUKEE AND OZAUKEE COUNTIES
VILLAGE OF BAYSIDE**

ORDINANCE NO: 05- 544

An Ordinance to Repeal Sections 50-71 through 50-101 of the
Municipal Code and to Recreate Sections 50-71 through 50-96
Authorizing the Health Department to Enforce State Laws
Regarding to Environmental Health and Sanitation

The Village Board of the Village of Bayside, Milwaukee and Ozaukee Counties, Wisconsin do ordain as follows:

SECTION ONE: Secs. 50-71 through 50-101 of the Municipal Code are hereby deleted in their entirety.

SECTION TWO: Secs. 50-71 through 50-96 are hereby recreated to read as follows:

DIVISION I. GENERALLY

50-71 AUTHORITY AND PURPOSE. This ordinance is adopted pursuant to authority provided by Wisconsin Statutes, including Sections 97.41 and 254.69 (2), which authorize local health departments to become the designated agent of the State Department of Health and Family Services (DHFS) and Department of Agriculture Trade & Consumer Protection (ATCP) for the purpose of issuing permits, making investigations or inspections and enforcing the applicable state administrative codes for the operations of retail food establishments, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments, campgrounds, recreational and educational camps, public swimming pools, and establishments possessing Class A, Class B, or Class C alcohol beverage licenses (for sanitation and health purposes and not alcohol licensing purposes), and in making investigations and inspections of food vending machines, their operators, vending machine commissaries, and national lunch and breakfast program and establishing permit and inspection fees related to the inspections and issuance of such permits. The local health department acting through the Environmental Health Consortium (as defined in this ordinance) will be required to enter into a Memorandum of Understanding with the DHFS regarding the powers and duties that it will be authorized to perform under the applicable statutes, this ordinance and the Memorandum of Understanding.

50-72 APPLICABILITY. The provisions of this Ordinance shall apply to the owner, operator or agents thereof of any hotel, motel, tourist rooming house, restaurant, food establishment, bed and breakfast establishment, campgrounds, recreational and educational camp, public swimming pools, establishments possessing Class A, Class B, or Class C alcoholic beverage licenses, vending machine commissaries or vending machines and national lunch and breakfast program in the Village.

50-73 REGULATIONS, RULES AND LAWS ADOPTED BY REFERENCE. The applicable laws, rules, definitions and regulations as set forth in Wis. Stats, chs, 97, 125, 251, 254, Wisconsin Administrative Code Chapters HFS 172, 175, 178, 192, 195, 196, 197, 198, ATPC 74, 75, 80, and COMM 90 and any future amendments thereof are hereby incorporated herein and adopted by reference and a copy of each shall be on file and open to public inspection in the offices of the Department and Village Clerk.

50-74 DEFINITIONS.

- (a) "Department or local health department" shall mean the North Shore Health Department.
- (b) "Duplicate Permit Fee" shall mean a fee for the replacement of the original permit.
- (c) "Environmental Health Consortium" means the North Shore Health Department and the Shorewood/Whitefish Bay Health Department for the purpose of entering into a Memorandum of Understanding with the Wisconsin DHFS for the purposes set forth in section 1.01 above.
- (d) "Licensed Establishment" shall mean an establishment that has a current and valid license that is required under this ordinance.
- (e) "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.
- (f) "Food Establishment" means an operation that stores, prepares, serves, vends, sells or otherwise provides food for human consumption. The term "food establishment" includes a "restaurant" as defined in s. 254.61 (5) Stats.; a "retail food establishment" as defined in s. 97.30 stats.; and a "temporary restaurant" as defined in s. 254.61(5m) Stats.
- (g) "Late Fee" shall mean a fee for failure to pay established fees by June 30 or the due date if different.
- (h) "Permit/License" means the document issued by the Department that authorizes a person to operate an establishment. The words "permit" and "license" as used throughout this ordinance shall be interchangeable.
- (i) "Person" means as applicable an individual, partnership, association, limited liability company, corporation or any other legal entity that operates or provides the services, food or other products that is subject to the sanitation or inspection requirements or requires a license or permit under this ordinance.
- (j) "Pre-Inspection Fee" shall mean a fee for consultative services offered to persons intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, restaurant, food store, vending machine commissary, swimming pool, campground or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast

establishment, restaurant, retail food store, vending machine commissary, swimming pool and campground.

(k) "Re-Inspection Fee" shall mean a fee for the third (3rd) and subsequent reinspections needed to address compliance issues with the statutes and administrative codes.

50-75 ENFORCEMENT AND RIGHT TO ENTER PREMISES. The provisions of this Ordinance shall be administered by or under the direction of the Department or authorized agent who shall have the right to enter during reasonable hours, upon any premises affected by this regulation to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographic or other evidence needed to enforce this Ordinance.

50-76 OBSTRUCTION OF HEALTH DEPARTMENT EMPLOYEES. No person may assault, restrain, threaten, intimidate, impede, interfere with or otherwise obstruct the Department or authorized agent in the performance of his or her duties under this section, nor shall the operator give false information with the intent to mislead the Department or authorized agent.

50-77 FOOD DEALERS LICENSE AND PERMIT.

(a) No person may operate or provide the services, food or other products that requires a license under this ordinance without first having obtained a current and valid license.

(b) Licenses shall not be transferable from person to person or from premise to premise with the exception that a license issued under the provisions of Wisconsin Chapter 254 may be transferred to an individual who is an immediate family member of the licensee of the establishment. A parent, child, stepchild, grandchild, sibling, or stepsibling shall be considered an immediate family member for purposes of this Ordinance. A license issued under the provisions of Wisconsin Chapter 97 may only be transferred to the spouse of the licensee.

(c) No permit shall be granted to any person under this Ordinance without a pre-inspection by the Department of the premises for which the permit shall be granted.

(d) No permit shall be issued until all application fees have been paid.

50-78 SANITATION REGULATIONS APPLICABLE REGARDLESS OF LICENSE EXEMPTION. Statutory exemptions from the requirement to obtain a food dealers license does not exclude any person handling food for public consumption from inspection and compliance with all sanitation requirements of the ordinance.

50-79 APPLICATION. All applicants must apply on forms furnished by the Department. All applications for permits shall be made in writing to the local Department where the business is located. All applications shall list the true, legal names of the owners or operators of the business, including partners and managing members of limited liability companies and the addresses. All corporations and limited liability companies applying for licensure shall be registered with the State of Wisconsin and the name of the registered agent shall be placed on the

application. The agent's name and address shall be kept current. The applicant shall provide documents, which reflect the aforementioned registration to the Department. The Department shall either approve the application or deny the permit within thirty (30) days after receipt of a complete application.

50-80 INSPECTION AND REINSPECTION.

- (a) One copy of the inspection report shall be given to the owner, operator or employee of the establishment and another copy shall remain on file at the Department.
- (b) As a condition of license renewal, all establishments licensed under this ordinance shall consent to an annual inspection and reinspection. License renewal may be withheld pending inspection, reinspection and compliance with these regulations.
- (c)
 - 1. Whenever an order or directive is issued on a health code violation, which requires a reinspection to determine compliance, 2 reinspections shall be made without charge and documented by the Department following the time period given in the order or directive.
 - 2. If, upon the second reinspection, the order or directive is found not to have been complied with and additional reinspections are required, a fee shall be assessed to the responsible party for each additional reinspection to compensate for the costs of such reinspections. Payment is due on written demand from the Department.

50-81 PROCEDURE FOR ISSUING NEW OR RENEWAL LICENSE. The Department shall issue a license to each applicant for a new or renewal license that meets all the requirements of this ordinance and has paid to the Department the applicable fee.

50-82 NON-PAYMENT OF FEES.

- (a) A license will not be issued until all applicable fees, late fees and processing charges are paid.
- (b) No license shall be issued to any person that owes the Village for overdue forfeitures, unpaid property taxes, assessments or special charges, late fees, or license fees relating to a current or previous licensed establishment until all such outstanding amounts are paid.
- (c) No license shall be issued for any premises or property for which property taxes, assessments or special charges, late fees, or license fees relating to a current or previous licensed establishment until all such outstanding amounts are paid.

50-83 POSTING. Each license shall be posted in a conspicuous place visible to the public on the licensed establishment premises.

50-84 CHANGES TO BE REPORTED.

- (a) A licensee shall notify the Department whenever there is a change in any information that is reported in the application form. The licensee shall make this notification in writing within 5 days after the change occurs.
- (b) The owner of any premises for which a license has been granted shall promptly notify the Department in writing of their intention to cease operations.

50-85 SUSPENSION OF LICENSE.

- (a) Whenever the Department finds a condition in a licensed establishment, which is determined to be a direct and immediate hazard to public health, the permit may be suspended without notice or warning.
- (b) Whenever the Department has reasonable grounds to believe there are violations that constitute a health hazard that are serious, but not an immediate threat to the public health, or for recurring or repeated violations, a permit may be suspended, if the Department serves a written notice of the violations and corrective actions required to the licensee, his agent or employee in charge of the licensed premises specifying a reasonable time limit for the performance of any corrective act required and the corrective action is not taken within the time required. Any such notice shall state that failure to take the corrective action shall result in suspension of the license.
- (c) Upon notification of suspension, the permit must be surrendered to the Department until the time of reissuance.
- (d) The Department may suspend any permit or license issued under this ordinance upon failure to pay any fees due under this ordinance. The Department will notify the permit holder in writing that the permit has been suspended and the reason why. The suspension will continue until payment of all past due fees.

50-86 REINSTATEMENT OF A SUSPENDED LICENSE. The license holder whose license has been suspended may at any time, make application for reinstatement of the license. Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department or designee shall make a reinspection and thereafter as many additional reinspections deemed necessary to assure that the applicant has complied with the requirements. If the findings indicate compliance, the Department may reinstate the license.

50-87 REVOCATION OF LICENSE.

- (a) For serious or repeated violations of any of the requirements of this ordinance or for interference with the Health Officer or designee in the performance of their duties, the Health Officer or designee may permanently revoke the license issued under this article. Prior to such actions, the Health Officer shall notify the license holder in writing, stating the reasons for which the license is revoked.

(b) When a license is revoked, the owner/operator shall turn over the license to the Health Officer or designee and cease operations immediately.

50-88 REAPPLICATION OF A REVOKED LICENSE.

(a) A person whose license has been revoked may, at any time, make reapplication for a revoked license. Within one week after the receipt of satisfactory application, accompanied by a signed statement by the applicant that the violations have been corrected, the Department or designee shall make a preinspection and thereafter as many additional reinspections as deemed necessary to assure that the applicant has complied with the requirements.

50-89 APPEAL. Any person refused or denied a license or had a license revoked may appeal through the appeal procedure provided under the provisions of Secs. 68.07 through 68.16 Wis. Stats.

50-90 CONSTRUCTION OR ALTERATION OF FOOD ESTABLISHMENTS.

(a) No person shall erect, construct, enlarge or alter a food establishment without first submitting to the Department or designee, plans (drawings) which clearly show and describe the amount and character of the work proposed and without first receiving approval of submitted plans. Such plans shall include floor plan, equipment plan and specifications, wall, floor and ceiling finishes, and plans and specifications for food service kitchen ventilation and plumbing. Submitted plans shall give all information necessary to show compliance with applicable health codes. Submitted plans shall be retained by the Department or designee.

(b) At the option of the Department or designee, plans need not be submitted to execute minor alterations to a food establishment. Approved plans shall not be changed or modified unless approval of such changes or modifications shall have first been obtained from the Department or designee.

50-91 VIOLATIONS. No person shall violate any provisions of this ordinance.

(1) Enforcement. The Department or its designee shall enforce any provision of this ordinance.

(2) Enforcement Procedure.

(a) Inspection. If, upon inspection, the Department or designee finds that any licensed or unlicensed establishment is conducted or managed in violation of the ordinances or regulations of the Village, laws of the State or regulations of any agency of the State prescribing standards of health or sanitation, the Department or designee shall serve a written order upon the licensee, his agent or employee in charge of the licensed premises or the person responsible for the violation, notifying him of such violations.

(b) Exceptions to Written Order. In extreme cases where a violation poses an immediate health hazard as determined by the Department or designee or, in the case of repeating

occurrences of the same violation by the same person, the actions specified in sub. (c) below, can be initiated immediately.

(c) Noncompliance With Order. If a person does not comply with a written order from the department or designee, the person may be subject to one or more of the following actions, and/or penalties.

1. The issuance of a citation. The Department's Health Officer or any other person duly authorized by the Health Officer is authorized pursuant to sec 800.02, stats. to issue municipal citations for any violations of the provision of this ordinance.

2. A reinspection fee.

3. Suspension of license

4. Revocation of license

5. Commencement of legal action against the person seeking a court imposed forfeiture and / or imprisonment.

6. Commencement of legal action against the person seeking an injunction to stop, abate the violation and/or correct the damage created by the violation.

7. Any other action authorized by this ordinance or by other applicable laws as deemed necessary by the Department or designee.

8. The initiation of one action or penalty under this section does not exempt the apparent violator from any additional actions and / or penalties listed in this section.

50-92 FEES.

(a) The fees for licenses, inspections, services and activities performed by the Department in carrying out its responsibilities under this ordinance are herewith established by this ordinance and are set forth on the attached Exhibit A entitled "Environmental Health Consortium Fee Schedule" and which may be amended from time to time by resolution adopted by the Village Board and which shall be on file and open to the public in the Department's office and the office of the Village Clerk.

(b) Fees to Accompany Application. License fees imposed under this ordinance shall accompany the license application. The Department shall issue the applicant a receipt for the license fee.

(c) No Proration. There will be no proration for license fees.

(d) Refunds. No license fee paid shall be refunded, unless a refund is requested prior to a pre-inspection for a new establishment.

(e) Local Preinspection Fees.

1. Preinspection fees shall be charged as enumerated in Environmental Health Consortium Fee Schedule.

2. Preinspection fees shall include all consultation prior to the establishment doing business.

3. Preinspection fees may be applicable for all new operations and changes in operation.
4. Preinspection fees are not refundable.

(f) Late Fees. A late fee, as enumerated in the Environmental Health Consortium Fee Schedule, shall be charged for all licenses issued under provisions of this ordinance.

1. This shall apply when an application is not renewed before the expiration date, unless waived by the Department.

2. A late fee shall also apply to a new establishment or any establishment with a new operator doing business before obtaining the required licenses, as provided for in this ordinance.

(g) Duplicate License Fee. A duplicate license fee as enumerated in the Environmental Health Consortium Fee Schedule shall be charged to duplicate any license provided for in this ordinance.

(h) License Fees. License fees, as enumerated in the Environmental Health Consortium Fee Schedule.

(i) All fees shall be accounted for separately and applied to the expenses under this ordinance.

(j) Reinspection.

1. A reinspection fee shall be charged as enumerated in the Environmental Health Consortium Fee Schedule.

50-93 EXPIRATION DATES.

(a) All licenses issued under provisions of this ordinance shall expire, unless otherwise ordered by the Department or authorized agent, as follows:

Food/drink - June 30
Hotel/Motel - June 30
Public Swimming Pool - June 30
Boarding/Rooming House - December 31
Bed & Breakfast - June 30
Recreation & Educational Camps - June 30
Campgrounds - June 30
Vending Machines - June 30

(b) The licenses shall expire at midnight of the last effective day of the license, unless otherwise provided by this ordinance or other applicable provision of State law.

50-94 RENEWAL.

(a) The Department prior to the expiration date shall furnish renewal notices. It is the responsibility of the owner/operator to complete the application form and pay the appropriate fee before the expiration date of such license.

50-95 CONFLICTS. Whenever conflicts between these rules and regulations and other Village ordinances or State and Federal regulations occur, the more stringent rule shall apply.

50-96 PENALTY FOR VIOLATION. Any person, partnership, firm, limited liability company, corporation or other legal entity found guilty of any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$2000.00 and the costs prosecution, and in default of payment thereof, shall be subject to imprisonment in the County Jail or House of Correction of Milwaukee County until such forfeiture and costs, together with any subsequent costs have been paid, but in any event, not to exceed ninety (90) days. Each day a violation continues constitutes a separate offense.

SECTION THREE. Article III of Chapter 50 of the Municipal Code is hereby retitled “Enforcement of State Laws Regarding Health and Sanitation.”

SECTION FOUR. That if any subsection, section or portions of this ordinance or the application thereof to any persons as enacted hereunder is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision and such holdings shall not effect the validity of the remaining portions hereof and the validity of the ordinance in all other respects shall not be affected thereby.

SECTION FIVE. That all ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

SECTION SIX. This Ordinance shall take effect upon passage and publication as provided by law and upon adoption of an ordinance in substantially the same form by all member communities of the North Shore Health Department and the member communities of the Shorewood/Whitefish Bay Health Department.

SECTION SEVEN: This ordinance shall take effect the day after publication in the *North Shore Bay Herald*.

PASSED AND ADOPTED by the Village Board of the Village of Bayside, Milwaukee and Ozaukee Counties, Wisconsin this 15th day of December, 2005.

Countersigned:

Samuel D. Dickman, President

Lynn A. Galyardt, Village Clerk/Treasurer